

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

MELANIE DAVIS,

Plaintiff,

vs.

HARVEY OAKS, L.L.C., and
SPIRIT SPE ALBTSN PORTFOLIO 2013-6,
LLC,

Defendants.

8:18CV136

ORDER

This matter is before the Court on the Motion to Vacate Order and Default ([Filing No. 22](#)) filed by Defendant, Spirit SPE Albtsn Portfolio 2013-6, LLC, (“Spirit SPE”). Plaintiff has filed a Statement of Non-Opposition ([Filing No. 26](#)) regarding the motion.

The Clerk properly entered default against Spirit SPE. Federal Rule of Civil Procedure 55(a) states “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party’s default.” Fed. R. Civ. P. 55(a). The Lancaster County Sheriff’s Office Civil Process division completed service on Spirit SPE at its registered office on April 11, 2018. ([Filing No. 17](#)). Spirit SPE failed to file an answer or other responsive pleading within twenty-one days, and the Clerk entered default against Spirit SPE on May 17, 2018. ([Filing No. 19](#)).

Contrary to Spirit SPE’s assertion, the Court’s April 26, 2018, Order ([Filing No. 13](#)) did not create an “anomaly.” At the time the Court entered its Order, Plaintiff had not yet filed proof of service on Spirit SPE, and thus at that time the Court could not determine what, if any, answer deadline applied to Spirit SPE. The fact that Plaintiff filed proof of service after the Court entered its order “terminating” the answer deadline does not affect the validity of service accomplished on April 11, 2018, and Spirit SPE’s obligation to file a responsive pleading within twenty-one days thereafter.

Nevertheless, considering that Plaintiff does not oppose the motion, and in the interest of justice, the Court will set aside the Clerk's Entry of Default against Defendant Spirit SPE Albtsn Portfolio 2013-6, LLC, pursuant to Federal Rule of Civil Procedure 55(c). Accordingly,

IT IS ORDERED:

1. The Motion to Vacate Order and Default ([Filing No. 22](#)) filed by Defendant, Spirit SPE Albtsn Portfolio 2013-6, LLC is granted;
2. The Clerk of Court shall set aside the entry of default against Defendant, Spirit SPE Albtsn Portfolio 2013-6, LLC at [Filing No. 19](#); and
3. Defendant, Spirit SPE Albtsn Portfolio 2013-6, LLC shall file a responsive pleading to the Complaint on or before June 19, 2018.

Dated this 6th day of June, 2018.

BY THE COURT:

s/ Michael D. Nelson
United States Magistrate Judge